IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2027 OF 2005

Irfan Nizam Qureshi ... Applicant

versus

The State of Maharashtra ... Respondent

...

Ms.Rebecca Gonsalvez, for the Applicant.

Mr.V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

27th April 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondent. As short question is involved, this application is taken up for final disposal forthwith by consent.

. The Applicant has been arrested on 28th June 2003 in connection with offence registered with Kandivli Police Station being CR.No.171/2003 punishable under sections 302, 394 and 397 read with section 34 of the Indian Penal Code. The offence is in relation to murder of one Laxmidas Jamnadas Dasani, a cloth merchant running shop in the name and style "Elco Fabric" at Mangaldas Market. The prosecution case is that in all four persons assaulted deceased Laxmidas and he succumbed to the injuries suffered by him during the said attack. The Applicant has been named as one of the accused. The prosecution has relied on the circumstance that the Applicant was arrested along with other accused together on 28th June 2003 from Room No. 15 of Shrihari Building, Khopoli. Whereas, the incident in question has taken place within the jurisdiction of Kandivli Police Station in Mumbai. The other circumstance relied upon by the learned A.P.P. is that the Applicant had disclosed about his involvement to the police soon after his arrest. The third piece of evidence which is relied upon to indicate complicity of the Applicant is the evidence of Sulochana Naresh Badiyani, who has

stated that Bhavesh, accused No.1, along with three persons in the age group of 20 to 22 years, had visited her house on the previous day. This is the only evidence which is pressed against the Applicant. In this backdrop, the Applicant had approached the trial Court for discharge. The trial Court has, however, rejected the application on the reasoning that the Applicant was found with the other co-accused persons at the time of arrest and considering the statement of Sulochana Badiyani, the prayer for discharge could not be acceeded to. After rejection of discharge application preferred by the Applicant, the Court has framed charge even against the Applicant on 15th February 2005. This application, therefore, not only challenges the order passed by the trial Court on discharge application dated 9th August 2004, but also the charge framed against the Applicant consequent to order dated 15th February 2005.

. As mentioned earlier, the trial Court declined to accept the stand taken on behalf of the Applicant mainly relying on two circumstances pressed into service by the prosecution, namely,

that the Applicant was found in the company of the co-accused at the time of arrest; and secondly, on the basis of statement of Sulochana Badiyani. In my opinion, having regard to the materials on record, and considering the submissions advanced across the Bar, the approach of the trial Judge cannot be sustained. There is no legal evidence to indicate the complicity of the Applicant in the commission of the offence. If it is so, the Applicant cannot be proceeded with for the charges framed against him. Insofar as the first circumstance, which has weighed with the trial Court that the Applicant was found in the company of the co-accused at the time of arrest is concerned, that circumstance does not take the matter any further. Merely because the Applicant was arrested along with the co-accused, by itself, cannot establish the guilt of the Applicant. It cannot be overlooked that the incident in question took place within the jurisdiction of Kandivli Police Station in Mumbai on 24th June 2003, whereas the Applicant has been arrested at Khopoli on 28th June 2003.

. To get over this position, learned A.P.P.

submits that the Applicant had disclosed about his involvement in the commission of the offence soon after the arrest. This submission clearly overlooks the legal requirement. Such statement has no evidentiary value. Statement made before the police by the accused himself by itself cannot be the basis to proceed against the accused. It is fairly accepted by the learned A.P.P. that the alleged statement is not a confessional statement as such. Besides, it is not even part of the documents submitted along with the final report by the investigating officer before the Court on the basis of which the Court is expected to frame the charge. Viewed in this perspective, that will have no bearing on the question required to be addressed in the present case.

. The next argument pressed into service on behalf of the prosecution is about the statement of Sulochana Badiyani. Even on fair reading of the said statement, it only discloses that Bhavesh, along with other three persons in the age group of 20 to 22 years, had visited her house on the previous day. There is no

clarification about the description of those persons or details have been given in the said statement. More than that, no identification parade has been held. In other words, it is not the prosecution case that Sulochana Badiyani has identified the Applicant as having visited on the previous day along with Bhavesh to her house. If it is so, the other evidence given by Sulochana Badiyani cannot be of any avail insofar as the present Applicant is concerned.

. Accordingly, as there is no legal evidence to indicate the complicity of the Applicant, in my opinion, the Applicant ought to succeed on his discharge application. Accordingly, the order passed by the trial Judge dated 9th August 2004 is set aside; and, instead, the discharge application preferred by the Applicant is allowed. As a consequence, the charges framed insofar as the Applicant is concerned will have to be dropped and the trial would proceed only against the remaining accused. Ordered accordingly.

(A.M.KHANWILKAR,J.)